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# Hj Abu bin Mohd Yusof v Hj Yahya bin Mohd Yusof

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HIGH COURT (BRUNEI DARUSSALAM) — CIVIL SUIT NO 134 OF 2005
KIFRAWI CHIEF JUSTICE
3 JULY 2010

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*Contract — Oral agreement — Existence of oral agreement — Whether oral agreement subsequently formalised through written agreements — Whether written agreements vitiated by misrepresentation — Purchaser of property subject to contract spending sums of money as purchase price and to renovate property — Whether purchaser had beneficial interest in property*

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The plaintiff sued the defendant for a declaration that the plaintiff was the legal and beneficial owner of a shophouse. The issue for the High Court was whether there had been an oral agreement between the parties for the sale of the shophouse to the defendant for a sum of B$150,000 in perpetuity and whether this oral agreement had been formalised in writing by the parties' signing of two agreements.

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**Held**, dismissing the plaintiff's action with costs:

(1) In the instant case, the defendant had orally agreed with the plaintiff to buy the shophouse at B$150,000 on the condition that he could pay by instalments, and the amount of instalments dependent on the availability of funds and what the defendant could afford at that time. The oral agreement was later formalised by the two agreements signed in Kuala Lumpur by the plaintiff and the defendant, in the presence of their wives and their other relatives. There was no evidence of any misrepresentation by the defendant. The plaintiff and his wife signed the agreements because they had agreed to sell to the shophouse to the defendant for B$150,000 and in perpetuity (see para 46).

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(2) The defendant had an oral agreement with the plaintiff to buy the shophouse for B$150,000 later formalised by an assignment in writing by the plaintiff and the defendant had paid the plaintiff a sum of B$97,981 and had also spent B$282,250 on renovations to the shophouse, the defendant had a beneficial interest in the shophouse. The defendant had not repudiated the oral agreement. The agreement assigning the plaintiff's rights in the shophouse to the defendant was a valid agreement (see para 48).

I

**[Bahasa Malaysia summary**

Plaintif menyaman defendan untuk perisytiharan bahawa plaintif adalah pemilik sah dan benefisial rumah kedai. Isu untuk Mahkamah Tinggi adalah sama ada terdapat perjanjian lisan di antara pihak-pihak untuk jualan rumah kedai kepada defendan pada harga B$150,000 untuk selama-lamanya dan sama ada perjanjian lisan ini telah diformalkan secara bertulis oleh pihak-pihak yang menandatangani dua perjanjian.

**Diputuskan**, menolak tindakan plaintif dengan kos:

(1) Dalam kes ini, defendan telah bersetuju secara lisan dengan plaintif untuk membeli rumah kedai pada harga B$150,000 dengan syarat bahawa dia boleh membayar secara ansuran, dan jumlah ansuran tersebut bergantung pada wang yang ada dan apa yang defendan mampu pada ketika itu. Perjanjian lisan kemudiannya diformalkan dengan dua perjanjian yang ditandatangani di Kuala Lumpur oleh plaintif dan defendan, di hadapan isteri-isteri mereka dan saudara yang lain. Tidak terdapat keterangan tentang apa-apa misrepresentasi oleh defendan. Plaintif dan isterinya menandatangani perjanjian-perjanjian tersebut kerana mereka telah bersetuju untuk menjual rumah kedai kepada defendan pada harga B$150,000 dan untuk selama-lamanya (lihat perenggan 46).

(2) Memandangkan defendan mempunyai perjanjian lisan dengan plaintif untuk membeli rumah kedai pada harga B$150,000 kemudiannya diformalkan dengan penyerahan hak secara bertulis oleh plaintif, dan defendan telah membayar plaintif sejumlah B$97,981 dan juga telah membelanjakan B$282,250 untuk pengubahsuaian rumah kedai tersebut, defendan mempunyai kepentingan benefisial dalam rumah kedai tersebut. Defendan tidak mengingkari perjanjian lisan tersebut. Perjanjian yang menyerahkan hak plaintif dalam rumah kedai tersebut kepada defendan adalah perjanjian sah (lihat perenggan 48).]

**Notes**

For cases on existence of oral agreement, see 3(2) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 4659–4660.

*Mohd Shazale bin Mat Salleh (Mohd Shazale Salleh) for the plaintiff.*
*Geetha a/p V Janardhanan (Abrahams Davidson & Co) for the defendant.*

**Kifrawi Chief Justice:**

PRELIMINARY

**[1]** Hj Abu bin Mohd Yusof in this case claimed against his younger brother

Hj Yahya bin Mohd Yusof ('the defendant') (DW1), inter alia, for a declaration that he is the legal and beneficial owner of Unit A1 of block A ('Unit A1') of two storey shophouses built on his own land EDR No 2581, Lot No 2541 at Kg Sengkarai Tutong. Hj Abu passed away before this trial. His wife Hjh Rokayah bt Abdullah ('PW1') is now the plaintiff suing as personal representative of the estate of Hj Abu bin Mohd Yusof.

**[2]** Hj Abu bin Mohd Yusof ('Hj Abu'), who claimed to be the legal and beneficial owner of land EDR No 2581, Lot No 2541 entered into a development agreement to construct 20 units of two storey shophouses on his land and in return he would be entitled to six units of the shophouses, namely Unit 1–6 of block A. The project was completed in 2002.

THE PLAINTIFF'S CASE

*PW1, Hjh Rokayah bt Abdullah (the plaintiff)*

**[3]** PW1 confirmed that her late husband told her Hj Yahya, the defendant (DW1) offered to buy Unit A1 for B$150,000. Her late husband did not agree to sell at the price but he would be prepared to sell Unit A1 for B$300,000 on a 90 year lease. Several days or weeks later her late husband agreed to give all keys to six units of shophouses in block A owned by her late husband as requested by the defendant. The defendant told him he would help to get tenants for him. After several days the defendant returned the keys except for the keys to Unit A1. The defendant informed her husband that he wanted to buy Unit A1 for B$150,000. According to PW1 her late husband was adamant that he would only sell at B$300,000. A few weeks after that the defendant deposited B$20,000 in her late husband's bank account. Her late husband was not pleased as he expected to be paid in full the sum of B$300,000. The defendant told him he would settle the balance by bank loan. Instead of settling the balance in full, the defendant made payments in instalment.

**[4]** According to PW1, in January 2004, her husband was diagnosed with cancer of the throat and immediately underwent surgery at RIPAS Hospital. On 22 March 2004, Brunei Government sent her late husband, her daughter and herself to Kuala Lumpur to accompany her late husband for radiotherapy treatment at the hospital there. They stayed at the Legend Hotel in Kuala Lumpur. On or around 1 April 2004 she and her daughter Khadariah ('PW2') and her late husband went to see Hjh Rauyah Hj Abd Latif ('DW4'), her late husband's niece to collect a package and money sent by her son. When they arrived at Hjh Rauyah's room they were surprised to see the defendant, the defendant's wife Hjh Edina ('DW2') and the defendant's granddaughter Dyg Harlinda ('DW3'). PW1 was talking to Hjh Rauyah and her late husband was together with the defendant. She did not hear any conversation between her

late husband and the defendant. PW1 recalled that the defendant asked her to sign on some loose sheet of papers. She did not read the contents of the papers, but noticed her late husband's signature on the papers and she thought it was alright to sign so she signed. She did ask for a copy of the papers they signed. The defendant promised to give a copy when he returned to Brunei. PW1 said whilst undergoing treatment in Kuala Lumpur her late husband's health was severely affected by the radiotherapy treatment. Her late husband suffered side effects such as not able to talk normally, impaired hearing, loss of memory, impaired vision and frequent headaches. She said her late husband received his treatment from 23 March 2004 to 8 May 2004. Her late husband eventually received a copy of the documents in Brunei in September 2004. Her late husband became angry when he discovered the papers stated he had sold Unit A1 for B$150,000 in perpetuity, when the true price was B$300,000 on a 90 year lease. He lodged a police report and instructed a lawyer to write a letter of objection to Hj Yahya.

**[5]** PW1 said she and her late husband did not go to visit Genting Highland, Cameron Highland, Langkawi and Malacca. PW1 said her late husband told her the land that was developed belong to his father and after his father passed away nobody ever made a claim against the land. PW1 said Hj Abu did not sell other Units A2, A3, A4, A5 and A6. PW1 said she did not know why their lawyer M/s Yu & Chiew did not prepare the agreement for Unit A1.

**[6]** When cross-examined, PW1 disagreed that from the two documents she signed in Kuala Lumpur she was aware that Hj Yahya was supposed to pay B$150,000. She did not read the documents. She said actually her children informed her late husband. She said she and her late husband disagreed with the contents of the two documents. She never told Hj Abu to increase the price of Unit A1 from B$150,000 to B$350,000. She said Hj Abu told Hj Yahya the price was B$300,000. She said Hj Ariffin did not tell Hj Abu that there were others interested to buy Unit A1 at B$350,000. She disagreed that they lodged a police report because Hj Yahya refused to pay B$350,000. She said Hj Abu did not increase the price to B$350,000 or B$380,000. She said Hj Abu did not ask Hj Yahya to deposit the money to his account.

*PW2, Hjh Khadariah bt Hj Abu*

**[7]** PW2 could only confirm that she heard from her parents PW1 and Hj Abu that they agreed to sell the shophouse Unit A1 at B$300,000 and for 90 years lease. She did not know about the two agreements signed in Kuala Lumpur on 1 April 2004. She did not see her parents and her uncle, Hj Yahya signing the two agreements. She was aware about the two agreements in September 2004 in Brunei. She, however, supported her mother's evidence that Hj Abu when they were in Kuala Lumpur for Hj Abu's treatment was sick due

to the cancer of his voicebox. She said they did not go sightseeing when they were in Kuala Lumpur.

THE DEFENDANT'S CASE

*DW1, Hj Yahya bin Hj Mohd Yusof (the defendant)*

**[8]** The defendant confirmed that the late Hj Abu was his elder brother. His late father Awang Mohd Yusof bin Jait was the owner of all that piece of land known as EDR 2581, Lot No 2541, Kg Sengkarai, Tutong district ('the land'). Sometime on or about 1960, his parents' house that was built on the land had become very dilapidated and was in a very bad condition. His family decided to demolish the old house and build a new house on the land. It was also decided that Hj Abu would apply for a government loan in the sum of B$12,000 as he was single at that time and he was entitled to apply for a government loan. His late father agreed to transfer the land to Hj Abu so that he could obtain a loan from the government and use the land as security. During the family discussion, his late father had however told Hj Abu that he would transfer the land to Hj Abu's name only for the purposes of obtaining the government loan and on the condition that once the loan has been repaid, Hj Abu was to divide the land amongst all the beneficiaries entitled to claim against his late father's estate. The land was then transferred to Hj Abu on the strict condition and understanding that Hj Abu would hold the said land in trust for all the beneficiaries of his late father's estate. Hj Abu agreed with this condition. His family then rebuilt the house on the land. He contributed B$50 towards the loan repayments and this sum was paid to Hj Abu directly. He also paid for many of the repairs that were carried out on the new house later on.

**[9]** The land department in a letter dated 30 November 2009 confirmed that his late father, Awang Mohd Yusof bin Jait is the original land owner of EDR 2581 Lot 2541. According to the defendant, in breach of his agreement with his late father, Hj Abu had refused to divide the land and/or any of the six units of shophouses amongst all those beneficiaries entitled to his late father's estate. He has continued to hold ownership of the land. Hj Abu was the administrator of his late father's estate but he failed to keep his promise to distribute the land amongst his family as agreed. Before the passing of his late father, he had spoken to Hj Abu on several occasions that his late father wanted the land to be divided amongst the family members but Hj Abu refused to do so. In fact he had to purchase shophouse Unit A1 from Hj Abu for the sum of B$150,000, which clearly demonstrated that Hj Abu failed to keep up his promise to his late father that he would hold the land on trust for all the beneficiaries entitled to his late father's estate.

**[10]** After the shophouses had been constructed on the land, Hj Abu's six units of shophouses remained vacant as he was unable to find any tenants. Sometime on or about November 2002, he offered to assist Hj Abu to advertise the properties for rent. Hj Abu agreed to his offer to assist and he proceeded to advertise the properties for rent in various shops in Bandar Seri Begawan and Tutong. He then returned all the keys except for Unit A1 to Hj Abu so that he could show the premises to prospective tenants.

**[11]** According to the defendant, he offered to pay Hj Abu the sum of B$150,000 for Unit A1 on the condition that he would only pay this sum by way of instalments and the amount of instalments would depend on the availability of funds and what he could afford at that time. Hj Abu told him that he needed a few days to think it over.

**[12]** After a few days, on or about 21 November 2002, Hj Abu told him that he was agreeable to his offer to purchase Unit A1 for the sum of B$150,000 on his terms and orally accepted it. He asked Hj Abu to give him some time to make arrangements for funds and Hj Abu readily agreed. Hj Abu did not at that time ask him to pay B$300,000 or higher for Unit A1 and he only increased the sale price to B$300,000 much later when he got a higher offer for the unit and this was well after the agreements had been signed in Kuala Lumpur by him. He did not return the keys to Unit A1 to Hj Abu as by that time Hj Abu had agreed to sell Unit A1 to him. Neither did Hj Abu ask him to return the keys for Unit A1 as it was understood that he could keep them, since he was purchasing Unit A1. He denied that there was an oral agreement between Hj Abu and him for the sale of Unit A1 to him on a 90 year lease at B$300,000. Hj Abu had gone back on his agreement to sell Unit A1 to him at B$150,000 in an attempt to get a higher price for the said unit.

**[13]** On 17 March 2003, he paid Hj Abu the sum of B$20,000 being the first instalment payable to Hj Abu pursuant to the agreement. Hj Abu accepted this sum. Following this payment, he made several other payments to Hj Abu. Hj Abu had never objected to the instalment payments to him and he continued to accept the payments between 2002 and 2005.

**[14]** The instalments for Unit A1 differed in amounts and the amounts depended on the amount of funds he had and what he could afford at that particular time. Sometimes Hj Abu would ask him to make some payments to him when he needed money, like the time when he went to Kuala Lumpur for radiotherapy treatment. All instalment payments made by him was in accordance with his agreement with Hj Abu that he would only pay him what he could afford and/or when such monies are required by Hj Abu.

**[15]** Hj Abu's allegation that he would be paying the balance purchase price of B$280,000 by way of a bank loan is inconsistent with his conduct in continuing to accept the instalment payments from him up until September 2005. It was also illogical for Hj Abu to continue accepting instalment payments from him between March 2003 and September 2005 if there was no agreement between Hj Abu and him for payment of the purchase price of Unit A1 by instalments. He confirmed Hj Abu was diagnosed with cancer sometime in 2004.

**[16]** According to the defendant, before Hj Abu left for Kuala Lumpur for his treatment, Hj Abu had drafted two documents in his handwriting, namely a 'Surat Perjanjian Penyerahan Kuasa Milik Dan Penerima Kuasa Milik Bagi Satu Unit Kedai 3 Tingkat, Blok A1, Bangunan Haji Abu Bin Mohd Yusof, Lot No 2541, Kampong Petani Tutong, Pekan Tutong, Negara Brunei Darussalam' and a 'Surat Amanah' and he merely typed out what Hj Abu had drafted. After he had completed typing the draft given to him by Hj Abu, he gave the typed documents to Hj Abu and asked him to check the documents again. Hj Abu went through the typed documents and made some amendments. He retyped the amendments as instructed by Hj Abu. He gave the final copies of the documents to Hj Abu. He and Hj Abu had gone over the terms of the *Surat Perjanjian Penyerahan Kuasa Milik Dan Penerima Kuasa Milik Bagi Satu Unit Kedai 3 Tingkat, Blok A1, Bangunan Hj Abu Bin Mohd Yusof, Lot No. 2541, Kampong Petani Tutong, Pekan Tutong, Negara Brunei Darussalam* and the *Surat Amanah* and they had agreed on those terms in Brunei prior to Hj Abu leaving to Kuala Lumpur. They did not sign the agreements in Brunei as they were both very busy and subsequently Hj Abu had to go to Kuala Lumpur for his treatment, hence time was short.

**[17]** About one week after Hj Abu had gone to Kuala Lumpur, Hj Abu called him and asked him to go to Kuala Lumpur and to bring the two agreements with him. He also asked him to bring cash to Kuala Lumpur as he would need the money for his expenses whilst staying in Kuala Lumpur with his family during his treatment. He went to Kuala Lumpur on 31 March 2004 as Hj Abu had personally requested him to go over to Kuala Lumpur and to bring with him the *Surat Perjanjian Penyerahan Kuasa Milik Dan Penerima Kuasa Milik Bagi Satu Unit Kedai 3 Tingkat, Blok A1, Bangunan Hj Abu Bin Mohd Yusof, Lot No. 2541, Kampong Petani Tutong, Pekan Tutong, Negara Brunei Darussalam* and the *Surat Amanah*, the terms of which had already been agreed upon by them whilst in Brunei.

**[18]** He went to Kuala Lumpur on 31 March 2004 with his wife Hjh Edina bt Abdullah (DW2), his niece, Hjh Rauyah bt Hj Abdul Latif (DW4) and his grand-daughter Harlinda bt Hj Rajee (DW3). He stayed at the Legend Hotel. Hj Abu had made arrangements for him to stay at Legend Hotel as he was also

staying at the Legend Hotel with his wife and daughter. By the time he reached the hotel it was almost 10pm due to the traffic and rain. Once he reached the hotel, he asked the hotel receptionist to call Hj Abu in his room to tell him that he had arrived but there was no answer in Hj Abu's room. He booked one room for the four of them. Once they reached the room, he tried calling Hj Abu in his room many times but he was not in. He only managed to contact him after 11pm. By the time Hj Abu and his wife (PW1) and his daughter (PW2) came over to his hotel room, it was well after 11pm.

**[19]** When Hj Abu and his wife and daughter came to their room, he spent some time chatting with him and the rest of his family members. Hj Abu had mentioned that he and his family had spent the day touring Kuala Lumpur and that was the reason why they got back to the hotel so late. He also said that he and his family leave the hotel very early in the morning for sightseeing. Hj Abu looked well and happy and chatted with him for at least half an hour before he asked him to show him the two agreements. Hj Abu did not complain of tiredness or fatigue or being unwell or in pain that night. After Hj Abu had chatted with him and his family, he asked for the *Surat Perjanjian Penyerahan Kuasa Milik Dan Penerima Kuasa Milik Bagi Satu Unit Kedai 3 Tingkat, Blok A1, Bangunan Hj Abu bin Mohd Yusof, Lot No. 2541, Kampong Petani, Tutong, Pekan Tutong, Negara Brunei Darussalam* and the *Surat Amanah*. He read through both the agreements in his hotel room and after he completed reading the agreements, he said 'bagus' (good). He also mentioned that these two agreements would ensure that his children would not quarrel amongst themselves or with his children. Hj Abu then signed the two agreements, in the presence of his wife and daughter, the defendant's wife, Hjh Edina, the defendant's niece Hjh Rauyah and his grand-daughter Harlinda. Hj Abu did not ask him any question on the two agreements that he read. Hj Abu signed the two agreements willingly and voluntarily, after reading, understanding and being fully aware of the contents of both the agreements. Hj Abu also initialed each page of both the agreements. His wife Hjh Rokayah bt Abdullah signed the two agreements as a witness.

**[20]** The *Surat Perjanjian Penyerahan Kuasa Milik Dan Penerima Kuasa Milik* consisted of two pages only and was a simple document drafted by Hj Abu himself. The *Surat Amanah* consisted of five pages and was also drafted by Hj Abu. He did not at any time force or compel Hj Abu to sign the agreements and Hj Abu's wife and daughter did not stop Hj Abu from signing or initialing the agreements. Hj Abu did not ask him any questions with respect to the agreements prior to signing the same. He also gave Hj Abu a cash sum of B$1,000 after he signed the two agreements which he wanted for his expenses in Kuala Lumpur and Hj Abu acknowledged receiving the said sum on the List of Payments prepared by him. The two agreements were drafted in the Bahasa Melayu, and Hj Abu was familiar with and understood Bahasa Melayu. If he

had been so unwell, not alert or suffering from pain as suggested, it was surprising that he even came to his room or that his wife and daughter would actually allow him to come in to his room at all. Hj Abu was never admitted to any hospital in Kuala Lumpur during this visit although he underwent radiotherapy treatment once or twice on a weekly basis. He looked and sounded fit when he met him on 31 March 2004. He continued to make several instalment payments to Hj Abu after he returned to Brunei, all of which were accepted by Hj Abu. In fact after Hj Abu returned to Brunei, he requested him to pay the sum of B$2,700 for the fire insurance of Units A2, A3, A4, A5 and A6 in Tutong, and he paid the said sum vide an IBB cheque No 133635. The sum of B$2,700 paid by him formed part payment towards the purchase of Unit A1.

**[21]** The signing of the two agreements in his hotel room was not only witnessed by Hj Abu's wife and daughter but was also witnessed by his wife, Hjh Edina bt Abdullah, his niece, Hjh Rauyah bt Hj Abd Latif, and his grand-daughter, Harlinda bt Hj Rajee, all of whom were in his hotel room at that time. Hj Abu had willingly and voluntarily signed the agreements with full knowledge of the terms of the documents he was signing.

**[22]** Hj Abu had also mentioned in his hotel room that he would remain in Kuala Lumpur for over one month and that he wanted to visit Pulau Langkawi, Cameron Highlands, Genting Highland and other places together with his wife and daughter during their stay. His wife, niece and grand-daughter remained in Kuala Lumpur for another one week but during that one week, they only met Hj Abu and his family on 1 April 2004 and they did not see or visit Hj Abu and his family after this.

**[23]** By virtue of the *Surat Perjanjian Penyerahan Kuasa Milik Dan Penerima Kuasa Milik* Hj Abu had absolutely assigned to him of all his rights in Unit A1 because the subdivided titles for the shophouses were not issued by the land department. As such he is the beneficial owner of Unit A1.

**[24]** Clause 3 provided that in consideration of Hj Abu assigning to him absolutely Unit A1, he would pay him the sum of B$150,000. Clause 3 further provided that he would pay the sum of B$150,000 in instalments or as requested by Hj Abu according to his needs until the said sum is fully settled.

**[25]** The *Surat Amanah* provided that Hj Abu had assigned to him absolutely Unit A1 for a consideration of B$150,000 and that payment of this sum would be by way of instalments or according to Hj Abu's request for payment (for his expenses) until full settlement of the said sum. The *Surat Amanah* also provided that as the absolute assignee of Unit A1, he would be responsible for the maintenance of Unit A1. These were the only references to Unit A1 in the *Surat*

*Amanah*. The rest of the terms of the *Surat Amanah* did not involve Unit A1 and had nothing to do with him. The *Surat Amanah* named the five children of Hj Abu as his successors and laid out their rights, responsibilities and obligations with respect to the land the remaining five shop houses. The contents of the *Surat Amanah* prove that Hj Abu drafted this agreement mainly for the benefit of his children. The *Surat Amanah* was also signed by Hj Abu's wife, Hjh Rokayah as the witness.

**[26]** Sometime on or about September 2004, Hj Abu had asked him for a copy of the two agreements he had signed in his hotel room in Kuala Lumpur and he asked him to leave them at the Tutong petrol station. Hj Abu wanted him to leave the agreements at the petrol station as he would go there every day. He left the agreements at the Tutong petrol station as arranged but Hj Abu did not collect the said agreements. Sometime later, Hj Abu came to his house in Kg Mata-Mata to collect the two agreements but it was during the Maghrib prayers and he was praying. He was not willing to wait and he therefore left without collecting the two agreements. On another occasion, Hj Abu came back to his house to collect the two agreements and he had to go outside to give the agreements as he refused to come into his house.

**[27]** According to the defendant, by this time the relationship was strained between Hj Abu and him, but he still respected him as his elder brother. Sometime on or about September 2004, Hj Abu told him that he wanted to increase the purchase price of Unit A1 to B$350,000. According to Hj Abu, his wife felt that the purchase price of B$150,000 was too cheap. Hj Abu also mentioned that his son Hj Ariffin had been offered at least B$350,000 for Unit A1. Hj Ariffin had been telling interested purchasers that Unit A1 belonged to him. He was not agreeable to Hj Abu's suggestion as Hj Abu had initially agreed to sell Unit A1 to him for B$150,000 and the two agreements had been signed and he had already paid several instalments pursuant to the earlier oral agreement. Hj Abu was not happy when he had refused to agree to pay B$350,000 for Unit A1 and he maliciously lodged a police report sometime on 28 September 2004, claiming that he did not know the contents of the two agreements he had signed in Kuala Lumpur. Hj Abu had also asked his lawyers M/s Yu & Chiew to issue a letter dated 3 November 2004 that alleged Hj Abu had signed the two agreements when he was very sick in Kuala Lumpur and that the documents would have to be revoked null and void.

**[28]** In a letter dated 19 November 2004 to M/s Yu & Chiew, he refuted the claims in M/s Yu & Chiew's letter dated 3 September 2009, amongst others that Hj Abu had signed the agreements whilst in hospital. Hj Abu was never admitted in any hospital when he went to Kuala Lumpur for his treatment. He

also maintained that Hj Abu had agreed to sell Unit A1 to him in November 2002 and that he had been making instalment payments to Hj Abu pursuant to this agreement.

**[29]** In a letter dated 9 December 2004, Hj Abu's lawyers said that Hj Abu was now prepared to sell Unit A1 to him for the sum of B$380,000 for a lease term of 60 years. Hj Abu's proposal to sell Unit A1 to him at B$380,000 is inconsistent with his claim that an oral agreement had been reached to sell Unit A1 for B$300,000 on a 90 year lease. He continued to make instalment payments to Hj Abu and despite Hj Abu's solicitors letters dated 3 November 2004 and 9 November 2004 denying the existence of an agreement between Hj Abu and him for the sale of Unit A1 for the sum of B$150,000, Hj Abu continued to accept payment of these monies and is therefore estopped from denying the existence of the said agreement. He only stopped making payments after service of the writ of summons and statement of claim on him.

**[30]** He purchased Unit A1 from Hj Abu pursuant to the oral agreement in November 2002 and which was later formalised by way of the *Surat Perjanjian Penyerahan Kuasa Milik Dan Penerima Kuasa Milik* and the *Surat Amanah*. He took over possession of Unit A1 in November 2002, with Hj Abu's consent and he made several payments totalling B$97,981. Hj Abu was aware that he operated a restaurant business in Unit A1 since 5 September 2005. He had obtained the approval of the relevant authorities to operate a restaurant business.

**[31]** DW1 was cross-examined regarding the price of the shophouse unit A1 for B$150,000. He insisted that that was the price agreed between him and Hj Abu, after Hj Abu consulted his family. He said Hj Abu changed his mind because of his wife did not agree. She told Hj Abu the price was too cheap. Hj Abu was informed that his son, Hj Ariffin, was offered B$350,000.

**[32]** He told Hj Abu the price of the Unit A1 for B$150,000 was when it was empty. He spent B$282,500 to renovate. He used his saving from his gratuity, his pension money, his income for his business to pay for the renovation.

**[33]** He said the agreements were signed in KL because he forgot all about the agreements and he was busy. Hj Abu was also busy. Hj Abu was the one who requested him to bring the documents to KL. Hj Abu also requested money from him. Regarding copies of the agreement, he did not think it was necessary to give copies to Hj Abu. It was not that he was unwilling to give. He did leave the copies at the petrol station in Tutong. Hj Abu did not pick them up. He later gave them to Hj Abu at his house in Kg Mata-Mata.

**[34]** He explained that he did not make a formal complaint because Hj Abu was already warned by his father to divide the land. If he did not listen he would be cursed for seven generation. He also did not want to quarrel with his elder brother. He respected his elder brother. That explained why he purchased Unit A1. Hj Abu did not give him his share in the land. He denied that he was the one who drafted the two agreements. He said that it was Hj Abu's idea. The wordings were Hj Abu's words.

*DW2, Hjh Edina bt Abdullah*

**[35]** She confirmed that Hj Abu, her husband Hj Yahya's elder brother, was her brother in law. She said her husband, the defendant informed her that he had purchased Unit A1, Tutong from Hj Abu in perpetuity for the sum of B$150,000 and that the price would be paid by way of instalments and depending on how much the defendant could afford.

**[36]** She knew he started paying in March 2003. DW2 confirmed on 31 March 2004 she, the defendant, his niece Hjh Rauyah (DW4) and his grand-daughter Halinda (DW3) went to Kuala Lumpur to visit Hj Abu who was undergoing treatment.

**[37]** According to DW2, her husband also brought the agreements relating to the purchase of Unit A1, as requested by Hj Abu. DW2 confirmed that Hj Abu, his wife and daughter came to their hotel room sometime after 11pm. DW2 said Hj Abu looked well and happy. He chatted with the defendant and the others. Later, DW2 saw the defendant giving the agreements to Hj Abu who then read through the documents. Hj Abu said 'bagus' (good). He signed the agreements. His wife (PW1) and daughter (PW2), Hjh Rauyah (DW4) and Halinda (DW3) were present when Hj Abu signed. DW2 mentioned that Hj Abu wanted to visit Pulau Langkawi, Cameron Highland, Genting Highland and other places. The next day when DW2 and the others visited Hj Abu and his family in their hotel rooms, Hj Abu showed them photographs of his holiday in Melaka.

*DW3, Halinda bt Hj Rejee*

**[38]** She stated that Hj Abu was her mother's uncle. She confirmed that on 31 March 2004 she went to Kuala Lumpur together with her grandfather, the defendant (DW1), his wife DW2 Hjh Edina bt Abdullah, and her aunt, DW4 Hjh Rauyah bt Hj Abdul Latif. She confirmed the defendant's evidence that Hj Abu, his wife PW1 and daughter PW2 came to hotel room where they were staying after 11pm. Hj Abu mentioned that they just went sightseeing in Kuala Lumpur. DW3 said Hj Abu looked well and happy. She said that Hj Abu chatted with the defendant and the others for about half an hour. She said Hj

Abu then asked the defendant to show the agreements. DW3 said Hj Abu read through the agreements. Hj Abu then signed the agreements in the presence of his wife and daughter, the defendant, Hjh Edina, Hjh Rauyah and DW3. DW3 also saw Hj Abu's wife PW1 signed the agreements after Hj Abu signed them. After they signed, DW3 said the defendant then signed the agreements.

**[39]** DW3 said that she did not see the contents of the agreements. DW3 said Hj Abu mentioned that he wanted to visit Pulau Langkawi, Cameron Highland, Genting Highland and other places. DW3 said on 1 April 2007 she, Hjh Edina and Hjh Rauyah went over to Hj Abu's hotel room to visit him and his family. Hj Abu showed them some photographs of his holiday in Melaka.

*DW4, Hjh Rauyah bt Hj Abdul Latif*

**[40]** She confirmed that both Hj Abu and the defendant Hj Yahya were her uncles. DW4 said that the defendant did mention he had purchased Unit A1, Tutong in perpetuity from Hj Abu for the sum of B$150,000 to be paid in instalments which also depending on what the defendant could afford. DW4 confirmed the defendant's, DW2's and DW3's evidence regarding their visits to Kuala Lumpur on 31 March 2004 to see Hj Abu and to bring the agreements pertaining to the purchase of Unit A1. DW4 confirmed that Hj Abu, his wife and his daughter came to their hotel room after 11pm. DW4 said that Hj Abu looked well and happy. Hj Abu laughed and chatted with the defendant and the others. After that DW4 saw the defendant gave Hj Abu the agreements. Hj Abu read throughout the agreements and said 'bagus' (good). DW4 said Hj Abu mentioned the two agreements would ensure his children would not quarrel amongst themselves or with the defendant's children. DW4 saw Hj Abu signed the agreements in the presence of his wife and daughter, the defendant, Hjh Edina, Halinda and herself. DW4 mentioned that she saw Hj Abu's wife PW1 sign the agreements after Hj Abu signed them. After that the defendant signed them. DW4 said Hj Abu mentioned that he wanted to visit Pulau Langkawi and Cameron Highland.

FINDINGS

*Was there an oral agreement between the plaintiff's late husband and the defendant?*

**[41]** Both the plaintiff and the defendant mentioned a discussion to buy the shophouse, Unit A1 between the plaintiff's late husband and his brother, the defendant. It is not in dispute that the defendant was in possession of the key to Unit A1. I find that this is consistent to an agreement been reached between the defendant and Hj Abu. The plaintiff stated that her late husband verbally agreed sometime in November 2002 to sell the Unit A1 at the price of

B$300,000 and on 90 years lease. The defendant, however, stated that his late brother verbally agreed to sell him at B$150,000. It is also not in dispute that the defendant had been making payment and the sum of B$97,981 were received by the plaintiff's late husband. Although Hj Abu did change his bank account number later this did not necessarily show he refused to accept payment. This oral agreement was according to the defendant formalised in writing by the signing of the two documents in Kuala Lumpur namely 'Surat Perjanjian Penyerahan Kuasa Milik Dan Penerima Kuasa Milik Bagi Satu Unit Kedai 3 Tingkat, Blok A1, Bangunan Haji Abu Bin Mohd Yusof, Lot No. 2541, Kampong Petani Tutong, Pekan Tutong, Negara Brunei Darussalam' and 'Surat Amanah' (the two agreements) by Hj Abu, the plaintiff and the defendant in the presence of the plaintiff, her daughter (PW2), the defendant's wife, Hjh Edina (DW2), the defendant's niece, Hjh Rauyah (DW4) and his granddaughter, Halinda (DW3).

**[42]** The plaintiff claimed that they were requested by the defendant to sign and she and her late husband signed without reading the two documents, the two agreements. She claimed the two agreements were drafted by Hj Yahya. She simply signed because she saw her husband's signature and trusted him.

**[43]** It is clear there was an oral agreement between the plaintiff's late husband, Hj Abu and his brother Hj Yahya, the defendant. However, what is in dispute is the price that was agreed between Hj Abu and Hj Yahya.

*Were the two agreements signed in Kuala Lumpur null and void because the documents were signed as result of misrepresentation by the defendant and the plaintiff's late husband was sick at that time?*

**[44]** The two documents were either signed on 31 March 2004 as claimed by the defendant or on 1 April 2004 as claimed by the plaintiff. The plaintiff, Hj Abu and their daughter left for Kuala Lumpur on 22 March 2004. Hj Abu started his radiotherapy treatment on 23 March 2004 after they arrived in Kuala Lumpur. There is evidence that Hj Abu could walk (though assisted by the plaintiff, according to her). The defendant's evidence supported by other witnesses DW2, DW3 and DW4 showed that Hj Abu was in general physically and mentally in good condition at the time when he signed the two agreements in KL.

**[45]** By looking at the documents the figures B$150,000 could be seen clearly. The plaintiff, however, claimed that she did not read the documents because she relied on her late husband who had already signed at that time before she signed. The plaintiff also claimed her late husband could not have

read the documents because he was not wearing his glasses. She also claimed that her late husband was suffering from the side effect of radiotherapy treatment such as impaired vision, impaired hearing and loss of memory.

CONCLUSION

**[46]** After considering carefully all the evidence I am not satisfied on the balance of probability that the defendant did orally agree with his brother, Hj Abu to buy the shophouse Unit A1 to the defendant at B$300,000 on a 90 years lease. I prefer to believe the defendant and his witnesses DW2, DW3 and DW4 than the plaintiff and her witness. I do not believe DW2, DW3 and DW4 conspired to tell lies so as to support DW1's evidence as submitted by counsel for plaintiff. If they used the same words and phrases in their affidavits this was because their affidavits were prepared by the same lawyer. They would usually be interviewed regarding what they had seen, heard and done. I believe the defendant agreed with Hj Abu sometime in November 2002 to buy the shophouse Unit A1 at B$150,000 on the condition he could pay by instalment and the amount of instalments would depend on the availability of funds and what he could afford at that time. This oral agreement was later formalised by the two agreements signed in KL by Hj Abu, his brother Hj Yahya (the defendant) in the presence of the plaintiff, Hj Abu's wife, Dyg Edina (DW2), Hj Yahya's wife and their other relatives. I accept the defendant's evidence that the two agreements were drafted by Hj Abu and that both of them had discussed the draft agreements in Brunei Darussalam. The two agreements were not signed earlier in Brunei because both Hj Abu and Hj Yahya were busy. I accept the evidence of the defendant that it was Hj Abu who suggested to him to bring the agreements to KL when he was in KL. I believe that Hj Abu wanted the agreements to be signed so that his children would not quarrel with Hj Yahya and Hj Yahya's children. I do not believe that the plaintiff and her husband were persuaded by the defendant to sign the two agreements by giving them misleading information. I do not find any evidence of misrepresentation by the defendant. The plaintiff did not hear the conversation between Hj Abu and the defendant (Hj Yahya). I do not believe the plaintiff that her husband was not in the right mind or was too sick when he signed the Agreements. I do not believe her that her husband was unable to read or understand the agreements before signing it. I do not believe her that she did not read the documents before she signed. I believe that she and Hj Abu in fact knew the contents of the documents before they signed. They signed because she and her husband agreed to sell to Hj Yahya Unit A1 for B$150,000 and in perpetuity. I accept the defendant's explanation for the delay in giving copies of the agreements to Hj Abu. He did not think it was necessary to give copies to Hj Abu.

**[47]** Hj Abu was likely to have changed his mind about his agreement with his brother, the defendant later. I believe Hj Abu was persuaded by his family in particular his wife the plaintiff, to increase the price of the shophouse Unit A1 from B$150,000 and in perpetuity to first B$350,000, then further increased to B$380,000 on 60 years lease and late reduced to B$300,000 on 90 years lease.

**[48]** Since the defendant had an oral agreement with Hj Abu to buy Unit A1 for B$150,000 which was later formalised by an assignment in writing by Hj Abu of all his rights in Unit A1 to the defendant and that the defendant not only had already paid Hj Abu the sum of B$97,981 but also spent B$282,250 on renovation of Unit A1, I find therefore the defendant had beneficial interest in Unit A1. The defendant had not repudiated the oral agreement. The agreement dated 1 April 2004 assigning Hj Abu's rights in Unit A1 to the defendant was a valid agreement.

**[49]** The plaintiff is also not entitled to vacant possession of Unit A1 and mesne profits until vacant possession of Unit A1. I therefore dismiss the plaintiff's claims. The costs of the action to be paid by the plaintiff to the defendant. I make the following orders:

(a) For the transfer of Unit A1 in Hj Yahya's name to be effected by the administrator or the plaintiff as the personal representative of Hj Abu, within seven days upon payment of the balance purchase price of B$52,019 (B$150,000 less payments of B$97,981).

(b) If the administrator or the plaintiff as personal representative of Hj Abu fails or refuses to effect the transfer of Unit A1 in Hj Yahya's name within the time stipulated, the chief registrar or any other duly authorised Registrar of the Supreme Court be at liberty to execute the borang 'A' and/or the memorandum of transfer and/or the borang sekatan and any other instruments or documents of transfer to facilitate and complete the transfer of Unit A1 to Hj Yahya.

(c) That in order to give effect to the order for transfer to be made therein, the plaintiff, her agents, servants and/or any third party who may be holding or in possession of the documents of the title do within seven days of the upon payment of the balance purchase price of B$52,019 deposit the documents of title for Unit A1 with Hj Yahya's solicitors.

(d) That the plaintiff shall furnish such details and or documents as are required to fill in borang A and/or such other details and/or documents

A as may be required by the relevant authorities for the purpose of effecting the sale and transfer of Unit A1 to Hj Yahya.

*Plaintiff's action dismissed with costs.*

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Reported by Andrew Chritopher Simon

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